

Anna Y. Park, CA SBN 164242  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
255 East Temple Street, Fourth Floor  
Los Angeles, CA 90012  
Telephone: (213) 894-1083  
Facsimile: (213) 894-1301  
Email: [lado.legal@eeoc.gov](mailto:lado.legal@eeoc.gov)

Elizabeth A. Naccarato, NV BAR #11221  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
333 Las Vegas Boulevard South, Suite 8112  
Las Vegas, Nevada 89101  
Telephone: (702) 388-5072  
Facsimile: (702) 388-5094

Attorneys for Plaintiff  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

VS.

WEDCO, INC. AND DOES 1- 10,

Defendant.

Case No.:

**COMPLAINT – TITLE VII**  
**• CIVIL RIGHTS**  
**(42 U.S.C. §§ 2000e, et seq.)**

## JURY TRIAL DEMAND

1 **NATURE OF THE ACTION**

2 United States Equal Employment Opportunity Commission (“EEOC”) brings this  
3 employment discrimination action under Title VII of the Civil Rights Act of 1964 and Title I of  
4 the Civil Rights Act of 1991 against Defendant Wedco, Inc. (“Wedco” or “Defendant”) and  
5 Does 1-10. EEOC brings this action to correct Wedco’s unlawful employment practices,  
6 discrimination on the basis of race, and to provide appropriate relief to Larry Mitchell who was  
7 adversely affected by Wedco’s discriminatory practices. As specified with greater particularity  
8 in Paragraph 9 herein, EEOC alleges that Wedco subjected Mr. Mitchell to harassment and  
9 disparate treatment based on his race, Black. EEOC further alleges that Wedco constructively  
10 discharged Mr. Mitchell from his position as a result of the unlawful harassment and disparate  
11 treatment on the basis of his race, Black.

12  
13 **JURISDICTION AND VENUE**

14 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,  
15 1343 and 1345.

16 2. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of  
17 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3),  
18 § 2000e-6 (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.  
19 The employment practices alleged to be unlawful were committed within the jurisdiction of the  
20 United States District Court for the District of Nevada.

21  
22 **PARTIES**

23 3. Plaintiff EEOC is the agency of the United States of America charged with the  
24 administration, interpretation and enforcement of Title VII, and is expressly authorized to bring  
25 this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3) and  
26 § 2000e-6. At all relevant times, Defendant Wedco continuously had at least (15) employees  
27 and has been a corporation doing business in Nevada.

1           4.     At all relevant times, Defendant Wedco has continuously been an employer  
2 engaged in an industry affecting commerce in the State of Nevada within the meaning of  
3 Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e (b), (g) and (h).

4           5.     EEOC is ignorant of the true names and capacities of each Defendant sued as  
5 DOES 1 through 10, inclusively, and therefore EEOC sues said defendant(s) by fictitious  
6 names. EEOC reserves the right to amend the Complaint to name each DOE defendant  
7 individually or collectively as they become known. EEOC alleges that each DOE defendant  
8 was in some manner responsible for the acts and omissions alleged herein and EEOC will  
9 amend the complaint to allege such responsibility when the same shall have been ascertained by  
10 EEOC.

11           6.     All of the acts and failures to act alleged herein were duly performed by and  
12 attributable to all Defendants, including Defendants DOES 1 to 10, each acting as a successor,  
13 agent, alter ego, employee, indirect employer, joint employer, integrated enterprise and/or or  
14 under the direction and control of the others, except as specifically alleged otherwise. Said acts  
15 and failures to act were within the scope of such agency and/or employment, and each  
16 Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other  
17 Defendants complained of herein. Whenever and wherever reference is made in this Complaint  
18 to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to  
19 mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

20  
21                                   **CONDITIONS PRECEDENT**

22           7.     More than thirty days prior to the institution of this lawsuit, Mr. Mitchell filed a  
23 charge of discrimination with the EEOC alleging that Wedco violated Title VII by  
24 discriminating against him based on race.

25           8.     The charge was investigated by the state agency, Nevada Equal Rights  
26 Commission ("NERC"). Wedco participated in the NERC investigation by providing a position  
27 statement, providing responses to NERC's request for information, facilitating an on-site  
28 investigation, and providing subsequent information to support its claims.



1 discharge.

- 2 a) Wedco subjected Mr. Mitchell to unwelcome and unwanted verbal  
3 and visual harassment by co-workers and supervisors.
- 4 b) Mr. Mitchell was employed by Wedco in October 2007, first in the  
5 warehouse working on inventory; then as a Driver making deliveries  
6 from Wedco's warehouse to its customers. He was appointed  
7 permanent driver based on successful performance and remained  
8 employed as such until his constructive discharge on July 25, 2008.
- 9 c) The severe harassment Mr. Mitchell experienced began after he  
10 became a driver. Specifically, Mr. Mitchell was subjected to  
11 derogatory name calling and racial comments and jokes as well as  
12 regular use of the word, "nigger." On a daily basis, Mr. Mitchell  
13 was exposed to a noose hanging in the receiving area that was visible  
14 from his workspace and in a high-traffic area in plain view. Racial  
15 comments were made on more than one occasion about the noose as  
16 well, and when Mr. Mitchell complained, a supervisor commented,  
17 "that nigger only complains." This harassment was objectively and  
18 subjectively hostile and was unwelcome by the Mr. Mitchell.  
19 Moreover, the harassment altered the conditions of his employment  
20 creating a hostile work environment due to his race.
- 21 d) The primary harassers were co-worker Todd Baker, the warehouse  
22 Receiving Clerk in whose office the noose was on display, and Jake  
23 Wilson, Mr. Mitchell's supervisor. Mr. Wilson gave Mr. Mitchell  
24 direction as to his daily assignments and had authority over when  
25 Mr. Mitchell could take breaks as described in paragraph 13(e)  
26 below. Moreover, Mr. Wilson took over the day-to-day supervisory  
27 responsibilities of the Warehouse Manager, Mike Potter, on the  
28 occasions Mr. Potter was not available.

- 1 e) Warehouse Manager Potter and Wedco Vice President Rich Stotz  
2 knew about the noose, knew it had a discriminatory connotation, and  
3 failed to take action to remove the noose.
- 4 f) In addition, the verbal harassment to which Mr. Mitchell was  
5 subjected was both severe and pervasive. The verbal harassment  
6 occurred on at least a weekly basis. The harassment was severe  
7 enough to alter the conditions of employment and to create an  
8 abusive work environment based on frequent use of the word  
9 “nigger” and the noose that hung in plain view of all employees.  
10 Moreover, Mr. Mitchell was forced to look at the noose every day  
11 throughout his tenure at Wedco. Members of Wedco’s upper  
12 management, including the Warehouse Manager and Vice President,  
13 were aware of the noose and its discriminatory connotation and took  
14 no action to remove it. On at least one occasion, Mr. Mitchell’s  
15 supervisor, Mr. Wilson, told Mr. Mitchell that the noose was for  
16 him.
- 17 g) Mr. Mitchell, as the only black employee, was treated differently  
18 than non-black counterparts. Specifically, Mr. Mitchell was treated  
19 differently by his supervisor, Mr. Wilson, who controlled Mr.  
20 Mitchell’s daily delivery activities. For example, Mr. Wilson did not  
21 give Mr. Mitchell breaks when requested, although Mr. Wilson did  
22 so for other employees. And Mr. Wilson insisted Mr. Mitchell ask to  
23 use the restroom, but did not insist that non-black employees get  
24 permission. Additionally, Mr. Wilson intentionally disrupted Mr.  
25 Mitchell work equipment and delivery schedule.
- 26 h) Wedco was put on notice of these discriminatory practices through  
27 multiple verbal complaints by Mr. Mitchell on a near weekly basis  
28 beginning in January 2008 until his constructive discharge in July

1 2008. Wedco failed to take prompt and effective remedial action to  
2 prevent and correct the discriminatory practices as described above.  
3 On more than one occasion, when Mr. Mitchell complained, Mr.  
4 Wilson commented, "that nigger only complains." Finally, both the  
5 Wedco Warehouse Manager and the Vice President were aware of  
6 the noose and failed to remove it.

- 7 i) The severe and pervasive nature of the harassment and Wedco's  
8 failure to take prompt and effective remedial action resulted in the  
9 Mr. Mitchell's constructive discharge on or about July 25, 2008.

10 14. The effect of Wedco's unlawful employment practices complained of as  
11 described in paragraph 13 has been to deprive Mr. Mitchell of equal employment opportunities  
12 and otherwise adversely affect his status as an employee because of his race, Black.

13 15. Wedco's unlawful employment practices complained of in Paragraph 13 were  
14 done intentionally.

15 16. Wedco's unlawful employment practices complained of in Paragraph 13 were  
16 done with malice and/or reckless indifference to Mr. Mitchell's federally protected rights. As a  
17 direct and proximate cause of the Wedco's acts as stated above, Mr. Mitchell has suffered  
18 emotional pain, suffering, humiliation, inconvenience, loss of enjoyment of life, and damages,  
19 all to be proven at trial.

20 17. As a direct and proximate cause of the Wedco's acts as stated above, Mr.  
21 Mitchell suffered loss of earnings including back pay, front pay and benefits in amounts  
22 according to proof.

23  
24 **PRAYER FOR RELIEF**

25 Based on all the foregoing, EEOC respectfully requests that this Court:

- 26 A. Grant a permanent injunction enjoining Wedco, its officers, successors, assigns,  
27 and all persons in active concert or participation with Wedco, from engaging in employment  
28

1 practices which discriminate on the basis of race, Black, that result in a racially hostile work  
2 environment.

3 B. Order Wedco to institute and carry out policies, practices, and programs which  
4 provide equal employment opportunities for Black employees, which eradicate the effects of its  
5 past unlawful employment practices. Such relief would include changes in Wedco's  
6 employment practices to protect other employees from discrimination and retaliation through  
7 training, reporting of complaints and recordkeeping.

8 C. Order Wedco to make Mr. Mitchell whole by providing appropriate back pay  
9 with prejudgment interest, in amounts to be determined at trial, and other affirmative relief  
10 necessary to eradicate the effects of its unlawful employment practices, including but not  
11 limited to rightful-place reinstatement or front pay.

12 D. Order Wedco to make whole Mr. Mitchell by providing compensation for past  
13 and future pecuniary losses resulting from the unlawful employment practices described in  
14 Paragraph13 above, in amounts to be determined at trial.

15 E. Order Wedco to make whole Mr. Mitchell by providing compensation for past  
16 and future non-pecuniary losses resulting from the unlawful practices complained of in  
17 Paragraphs 13 above, in amounts to be determined at trial.

18 F. Order Wedco to pay Mr. Mitchell punitive damages for their malicious and/or  
19 reckless conduct described in Paragraph13 above, in amounts to be determined at trial.

20 G. Grant such further relief as the Court deems necessary and proper in the public  
21 interest.

22 H. Award EEOC its costs of this action.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**JURY TRIAL DEMAND**

EEOC requests a jury trial on all questions of fact raised by its Complaint.

Dated: September 27, 2012

Respectfully Submitted,

P. DAVID LOPEZ  
General Counsel

JAMES LEE,  
Deputy General Counsel

GWENDOLYN YOUNG REAMS,  
Associate General Counsel

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
131 M Street, NE  
Washington, DC 20507

By: 

ANNA Y. PARK

Regional Attorney  
U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION